

APPEAL NO. 020499
FILED MARCH 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on February 7, 2002, the hearing officer found that the appellant (claimant) did not suffer damage or harm to his person while in the course and scope of his employment on _____, and that he did not thereafter have disability. The claimant has appealed these determinations on evidentiary sufficiency grounds and seeks our reversal. The respondent (carrier) urges in response that the challenged findings are sufficiently supported by the evidence and should be affirmed.

DECISION

Affirmed.

The claimant testified that while employed as a service area valet at an auto dealership, a customer drove his car into the service bay, striking the claimant's left leg in the process and that the customer exited the car, met with the service representative, and departed the premises in the courtesy van, all without ever acknowledging that he had struck the claimant. The claimant stated that he sustained left knee and ankle sprains and was eventually taken off work. A clinic record of his visit on _____, reflects that the claimant was diagnosed with a knee contusion and was returned to work the next day. The claimant's wife testified, essentially repeating much of the claimant's testimony. The carrier called the customer involved and he denied ever having seen the claimant before the hearing, let alone striking him with his car. The carrier also called several other dealership employees, none of whom witnessed the incident.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly

wrong or manifestly unjust and we do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **UNIVERSAL UNDERWRITERS, a Division of Zurich North America**, and the name and address of its registered agent for service of process is

**GARY SUDOL
ZURICH NORTH AMERICA
12222 MERIT DRIVE
DALLAS, TEXAS 75251.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Judge